

1 FRANK FALZETTA, Cal. Bar No. 125146
 2 SCOTT SVESLOSKY, Cal. Bar No. 217660
 3 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 333 South Hope Street, 48th Floor
 3 Los Angeles, California 90071-1448
 4 Telephone: 213-620-1780
 4 Facsimile: 213-620-1398
ffalzetta@sheppardmullin.com
ssveslosky@sheppardmullin.com

6 TED C. LINDQUIST, III, Cal. Bar No. 178523
 7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
 Four Embarcadero Center, 17th Floor
 San Francisco, California 94111-4109
 8 Telephone: 415-434-9100
 8 Facsimile: 415-434-3947
tlindquist@sheppardmullin.com

10 Attorneys for Defendant and Counterclaimant
 LIBERTY MUTUAL FIRE INSURANCE COMPANY

11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA

14 LARGO CONCRETE, INC., a California
 Corporation; N.M.N. CONSTRUCTION,
 15 INC., a California Corporation,

Plaintiffs,

16 v.
 17

LIBERTY MUTUAL FIRE INSURANCE
 COMPANY, a Massachusetts Corporation,
 and DOES 1 through 100, inclusive.

18 Defendants.
 19

20 AND RELATED COUNTERCLAIM

21 Case No. C07-04651 CRB (ADR)

22 Hon. Charles R. Breyer
 [Complaint Filed: September 10, 2007]

23 **SUPPLEMENTAL DECLARATION OF
 24 SCOTT SVESLOSKY FILED IN SUPPORT
 25 OF LIBERTY MUTUAL FIRE
 26 INSURANCE COMPANY'S REPLY BRIEF**

27 Date: December 21, 2007

Time: 10:00 a.m.

Place: Courtroom 8

28

1 **SUPPLEMENTAL DECLARATION OF SCOTT SVESLOSKY**

2 I, Scott Sveslosky, declare as follows:

3 1. I am an attorney duly admitted to practice before this Court, and am an
4 associate with Sheppard, Mullin, Richter & Hampton LLP, attorneys for defendant Liberty Mutual
5 Fire Insurance Company ("LMFIC"). I have personal knowledge of the facts set forth below and,
6 if called and sworn as a witness, could and would testify competently thereto.

7 2. In an attempt to locate a litigation file or other documents relating to the
8 Tony's Fine Foods v. Liberty Mutual Insurance Company litigation, I contacted the office manager
9 of Kern & Wooley ("K&W"), the law firm that defended Liberty Mutual Insurance Company
10 ("LMIC")¹ in that case, and Richard Carlson, Tony's Fine Foods' attorney. Neither K&W nor Mr.
11 Carlson had an original or copy of the Tony's Fine Foods litigation file. Similarly, Liberty Mutual
12 does not have a copy of K&W's litigation file for the Tony's Fine Foods case. The only
13 information currently maintained by Liberty Mutual relating to Tony's Fine Foods includes
14 electronic invoices submitted by K&W and a limited number of e-mails and letters (sometimes
15 with attachments) received from K&W attorneys and other employees. Liberty Mutual does not
16 have copies of any privilege logs prepared by K&W in the Tony's Fine Foods matter.

17 3. I have reviewed the March 8, 2004 invoice that K&W submitted to LMIC
18 for the Tony's Fine Food matter. That invoice is authenticated by, and attached as Exhibit E to,
19 the concurrently-filed Greg Farkas' declaration. Exhibit E shows that Mr. Pynes billed 9.8 hours
20 for work he performed on Tony's Fine Foods on December 10, 12, 14, 15, 17 and 18, 2003.
21 According to the invoices, Mr. Pynes' work on Tony's Fine Foods included: (i) reviewing
22 underlying file information, (ii) analyzing claim and other underlying file materials for production,

23
24
25
26
27 ¹ At times in this declaration I refer collectively to LMIC and LMFIC as "Liberty Mutual."
28

1 redaction and segregation of privileged information and documents, and (iii) preparing a privilege
 2 log for documents withheld from discovery or redacted. In addition to the March 8, 2004 invoice,
 3 I have reviewed all other invoices that K&W submitted to LMIC on Tony's Fine Foods. I did not
 4 locate a billing entry for any other K&W attorney describing the preparation or revision of any
 5 privilege log after the last billing entry that Mr. Pynes recorded for his time on the matter.

6

7 4. In November 2006, Sheppard, Mullin, Richter & Hampton became counsel
 8 of record for LMFIC in Raymonda Ashou v. Liberty Mutual Fire Ins. Co., Los Angeles County
 9 Superior Court Case No. BC 300992 ("Ashou"). Frank Falzetta and I were the primary attorneys
 10 handling Ashou for LMFIC. Attached to this declaration as Exhibit G is a true and correct copy of
 11 the Ashou Complaint, in which Ms. Ashou alleged that LMFIC breached the implied covenant of
 12 good faith and fair dealing (*i.e.*, acted in "bad faith") by (i) unreasonably withholding homeowners
 13 insurance policy benefits allegedly due for property damage caused by the 1994 Northridge
 14 Earthquake, (ii) failing to properly investigate her claim, and (iii) unfairly adjusting her claim.

15

16 5. K&W initially represented LMFIC in Ashou. Craig Pynes was one of the
 17 K&W attorneys representing LMFIC in Ashou. Later, but before Sheppard Mullin came on board
 18 in November 2006, some of the K&W attorneys on the case moved to Peterson & Bradford.

19

20 6. After Sheppard Mullin obtained the Ashou litigation file from Peterson &
 21 Bradford, I reviewed it, and I am familiar with its contents. I have also reviewed K&W's May 20,
 22 2004 invoice to Liberty Mutual in Ashou. A copy of that invoice is authenticated by, and attached
 23 as Exhibit F to, Greg Farkas' declaration, and has been concurrently submitted to the Court under
 24 seal for *in camera* review. Exhibit F sets forth the time entries by K&W attorneys and other
 25 employees in defending Ashou from September 2003 through May 2004.

26

27 7. According to the May 20, 2004 invoice (Exhibit F), Mr. Pynes billed 85.8
 28 hours for his time spent defending LMFIC in the Ashou matter. The litigation file documents and

1 May 20, 2004 invoice show that Mr. Pynes' work included, but was not limited to, the following
 2 tasks: (i) preparing pleadings, discovery and discovery responses, subpoenas, and memos, (ii)
 3 reviewing and analyzing claim file materials and ACES notes (*i.e.*, internal computer notes), (iii)
 4 researching various legal issues, including the genuine dispute doctrine and defenses to "bad faith"
 5 claims, (iv) participating in internal strategy meetings and discussions with Kern & Wooley
 6 attorney Susan Olson, (v) communicating with plaintiff's counsel, (vi) investigating facts of the
 7 case, (vii) preparing a summary of the case for meetings with Home Office, (viii) preparing an
 8 initial case evaluation letter to send to the "client," and (ix) analyzing different issues for a status
 9 report to the "client." Mr. Pynes also reviewed "claim manual" documents and prepared a
 10 privilege log for documents withheld or redacted during discovery.

11

12 8. In Ashou, the litigation file shows that Mr. Pynes had direct
 13 communications with Liberty Mutual in-house attorneys and employees. For example, a letter that
 14 I found in the litigation file shows on November 21, 2003, Mr. Pynes sent a letter to Michael
 15 Gonzales, a Liberty Mutual claims manager, with carbon copies to Liberty Mutual's in-house
 16 attorney William Cupelo, Esquire and Special Corporate Litigation Examiner Nancy McCormick
 17 in the Home Office Legal Department.

18

19 9. Attached to this declaration as Exhibits J, K and L, respectively, are true
 20 and correct copies of the complaints filed in the following matter: (1) Diane Cessna v. Liberty
 21 Mutual Ins. Co., Orange County Municipal Court (Central Orange) Case No. 03CC01793
 22 ("Cessna")²; (2) Ralph Mock et al. v. Liberty Mutual Insurance Co., Los Angeles County
 23 Superior Court Case No. BC 297264 ("Mock")³; and (3) Danielle McLoughlin v. Liberty Mutual

24
 25 ² Plaintiff erroneously sued LMIC in Cessna. The proper defendant in that matter was
 LMFIC. (See S. Olson Declaration).

26 ³ Plaintiffs list LMIC on the caption page of the complaint. However, in the body of Mock
 27 complaint, plaintiffs identify LMFIC as the defendant. Also, as explained in Ms. Olson's
 concurrently filed declaration, the proper defendant was LMFIC. (See, S. Olson
 Declaration)

28

1 Ins. Co., Los Angeles County Superior Court Case No. LC 063886 ("McLoughlin").⁴ The Cessna,
 2 Mock and McLoughlin complaints all include "bad faith" allegations against LMFIC. The report
 3 identified as Exhibit B in Greg Farkas' declaration and submitted to the Court under seal for *in*
 4 *camera* review shows that Mr. Pynes worked on all of these matters. The hours summary that Mr.
 5 Farkas prepared, Exhibit D, shows that Mr. Pynes spent 442.3 hours on "bad faith" matters for
 6 LMFIC – Ashou, Cessna, Mock and McLoughlin. Mr. Pynes also spent an additional 300.9 hours
 7 on matters that involved an LMFIC insured (see Exhibit D and John Silberstein declaration).
 8 Thus, the total amount of time that Mr. Pynes spent on LMFIC matters total at least 743.2 hours.

9

10 10. I have reviewed the report identified as Exhibit B in Greg Farkas'
 11 declaration and submitted to the Court under seal for *in camera* review. The report shows all of
 12 the time that Mr. Pynes billed to LMIC for work that he performed for Liberty Mutual while at
 13 K&W. Based on the report, from July 21, 2003 to March 17, 2004, Mr. Pynes billed 1,291.2
 14 hours for his time. In general, and other than Ashou, the billing report (Exhibit B) shows that Mr.
 15 Pynes' work for Liberty Mutual and related affiliates included, but was not limited to, the
 16 following tasks:

- 17 a. Preparing pleadings, discovery and discovery responses, subpoenas,
 18 memos, case evaluations and summaries, and privilege logs;
- 19 b. Preparing status reports, initial case evaluations and correspondence
 20 to send to "the client;"
- 21 c. Preparing case summaries for meetings "with Home Office;"
- 22 d. Reviewing and analyzing claim file materials and ACES notes (*i.e.*,
 23 internal computer notes);
- 24 e. Reviewing documents received from Liberty Mutual and conducting
 25 privilege reviews in preparation for document productions;

26

27 4 Plaintiff erroneously sued LMIC in McLoughlin. The proper defendant in that matter was
 28 LMFIC. (See S. Olson Declaration).

- 1 f. Reviewing file materials, including "documents related to Remedy
2 Temp," "information from Home Office," and "internal documents;"
3 g. Researching various legal issues, including issues relating to "bad
4 faith" and reserve information;
5 h. Participating in internal strategy meetings and discussions;
6 i. Communicating with opposing counsel;
7 j. Investigating facts for any given matter;
8 k. Reviewing and analyzing claim manuals, policies and underwriting
9 files;
10 l. Attending and participating in mediation, settlement discussions and
11 negotiations;
12 m. Preparing mediation briefs;
13 n. Assisting in deposition preparation, preparing for deposition, and
14 taking depositions;
15 o. Investigating and making coverage determinations;
16 p. Preparing coverage opinions; and
17 q. Attending case management and status conferences, hearings on
18 motions.
19

20 The billing report also shows that Mr. Pynes had direct communications with
21 Liberty Mutual regarding matters on which he worked. For example, according to the billing
22 records, on February 4, 2004, Mr. Pynes spoke with Liz Flanders, a paralegal formerly at Liberty
23 Mutual's Home Office Legal Department, while working on the McLoughlin matter. On January
24 23, 2004, he had a "meet[ing] with client re: mediation" in the Kelly & Picerne, Inc. matter. In
25 February 2004, Mr. Pynes prepared a case status letter to Randy Schubert, auto liability claims
26 manager, that addressed settlement strategy and mediation for the Kelly & Picerne, Inc. matter. In
27 March 2004, Mr. Pynes had two telephone calls with Bruce Edwards, a senior portfolio
28 underwriter, where he discussed mediation for the Kelly & Picerne, Inc. matter. From December

1 2003 to February 2004, Mr. Pynes had at least eight telephone conversations and exchanged
2 approximately seven e-mail communications with Lorrie Isaac, Senior Technical Claims
3 Specialist, where he discussed mediation, settlement negotiations and related issues in the
4 Designer Marble Products, Inc. matter. In addition, the billing report (Exhibit B) shows that in the
5 Cessna matter, Mr. Pynes specifically "review[ed] file materials and analyze[d] on-line
6 information re: corporation information for Liberty Mutual Fire Insurance Company for
7 responding to form interrogatories."

8

9 11. On November 16, 2007, I attended the depositions of Susan Olson and
10 Melodee Yee. On November 27, 2007, I attended the deposition of Lisa Hansen. Attached to this
11 declaration and Exhibits N, O and P respectively are true and correct copies of the cited excerpts
12 from the deposition transcripts of Ms. Olson, Ms. Yee and Ms. Hansen.

13

14 I declare under penalty of perjury, pursuant to the laws of the United States of
15 America, that the foregoing is true and correct.
16

17

18

19

20 Executed this 14th day of December 2007 at Los Angeles, California.
21

22

23

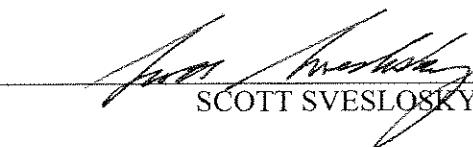
24

25

26

27

28



SCOTT SVESLOSKY